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RESPOND TO NEW YORK

October 11, 2006

VIA ELECTRONIC FILING

Hon. Joanna Seybert, U.S.D.J.
United States District Court
Eastern District of New York
Alfonse M. D'Amato Federal Building
Central Islip, NY 11722-4443

Re: S&L Vitamins v. Australian Gold
05-CV-1217 (JS) (MLO)

Dear Judge Seybert:

We represent S & L Vitamins and Larry Sagarin in the above-captioned matter. We have served and filed Rule 56.1 statements and responses to those filed by our adversaries and intend to make a motion for summary judgment. We therefore join in the request of Mr. Early of today's date for a pre-motion conference.

The basis of our motion was set out extensively in our earlier motion for judgment on the pleadings. The Court, in its subsequent March 2006 ruling, essentially laid out the legal issues in this case and the factual requisites that Australian Gold – which is the trademark holder, contract claimant and for all practical purposes is essentially the plaintiff in this declaratory judgment case – would have to meet to maintain its claims. We believe that the record developed in discovery establishes a clear failure by Australian Gold to meet those standards, and that the Court will agree based on established legal standards for the sorts of claims at issue in this case.

We also believe we will be able, at the motion conference, to resolve a number of issues as to the affirmative claims of our client, S & L Vitamins, by stipulation, which may reduce or eliminate the need for motion practice by our adversaries. We look

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forward to the Court's advice regarding the scheduling of this conference, and thank Your Honor for her consideration.

Respectfully submitted,

Ronald D. Coleman

cc: Francis J. Early, Esq.
Scott Matthews, Esq. (email)